Office-Supreme Court, U.S.
FILED
APR 26 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1557

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

I/S NOREXIM, AND M/V TENTO,
Petitioners,

VS.

GULF TRADING & TRANSPORTATION CO., and
PERMAL SHIPPING CO.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

REPLY BRIEF

R. FREDERIC FISHER
Two Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 421-4600
Attorney for Petitioner

D. THOMAS MCCUNE
LILLICK MCHOSE & CHARLES
Two Embarcadero Center
San Francisco, CA 94111
Of Counsel

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

TABLE OF AUTHORITIES CITED

Cases

	Page
Lauritzen v. Larsen, 345 U.S. 571 (1953)	1, 3
Romero v. International Terminal Operating Co., 358 U.S. 354 (1959)	3

Statutes

Ship Mortgage Act (46 U.S.C. Section 971)	3

Other Authorities

Restatement (Second) of Conflict of Laws (1971): Sections 6, 145 and 251	1, 2

No. 82-1557

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

I/S NOREXIM, AND M/V TENTO,
Petitioners,

VS.

GULF TRADING & TRANSPORTATION CO., and
PERMAL SHIPPING CO.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

REPLY BRIEF

Respondents' Brief so drastically distorts the questions raised and represents Petitioners' points with such sophistry that it requires reply.

Contrary to Respondents' assertion (Resp. Brief pp. 1, 6), we do not claim to restrict the standards of *Lauritzen v. Larsen*, 345 U.S. 571 (1953), to seamen's injury claims, although *Lauritzen* and its progeny in this Court arose from such claims and are cast in terms particularly applicable to them. Nor do we contend for a "single contact" theory. Rather, we assert that this Court has not (as the courts below thought) extended the accepted doctrine of choice of tort law reflected by *Lauritzen* and the *Restatement* (§ 145) to the exclusion of the corresponding *Restatement* formulation (§§ 6 & 251) of the relevant contacts in

maritime lien cases, pursuant to which "greater weight will usually be given to the location of the chattel at the time the security interest attached than to any other contact in determining the state of the applicable law," *Restatement* § 251(2). The Court of Appeals dismissed the location of the vessel as "happenstance and insubstantial". Burdened with the Ninth Circuit's indefensible disregard of the applicable *Restatement* formulations, Respondents merely cavil by remarking that "the *Lauritzen* rule does not and should not require slavish adherence in maritime cases to the *Restatement*, let alone to any particular section of the *Restatement*." Resp. Brief p. 6.[1]

Respondents subtly attempt to shift attention from the critical events of furnishing bunkers in Italy and canal tolls in Egypt to occurrences in New York which they characterize as the "transactions". Resp. Brief, pp. 4, 8, 13. But the United States statute they invoke does not confer a lien for the transactions of broking, arranging or agreeing to provide. It confers a lien for nothing other

---

[1]Respondents also assert that *Restatement* section 251(2) "only makes sense when applied to an immovable chattel, not to a vessel in international commerce." (Resp. Brief, p. 7.) They attempt to find support for this assertion in comment (e) to section 251. This comment deals with *consensual* security interests, as its first sentence makes clear. Comment (f), discussed at page 9 of the Petition, is concerned with *non*-consensual security interests. Respondents do not dispute that a maritime lien is a non-consensual security interest. Hence, their reliance on comment (e) is misplaced. The distinction between consensual and non-consensual security interests is an important one. In the case of the former the parties negotiate their agreement, and they are therefore aware of circumstances which may reduce the weight to be given to the location of the chattel as a factor in determining the law to be applied to their agreement. In the case of non-consensual security interests no negotiations take place, and the focus of the parties is necessarily on events which occur where the chattel is located. Hence, it is appropriate to give that factor greater weight, and the possibility that that chattel may be moved is of little significance.

than "furnishing" (46 U.S.C. § 971), something done by AGIP, the Italian company in Italy and by Permal's Egyptian affiliate in Egypt. The New York "transactions" relied upon by Respondents did not include the shipowner, the ship (which was not even in this country at the time) nor any agent of the ship. And the vessel was far from the United States when U.S. law is supposed to have operated upon it to create a lien which could then be acquired by an American company. In any event, the place of contracting has been characterized as "fortuitous and of little importance" in the *Lauritzen* context, *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 383 (1959), and no reason exists here to give it greater significance, particularly since Petitioner Norexim was not a party to the Gulf and Permal contracts with the vessel's sub-time charterer.

Respondents assert that Italy and Egypt have no interest because their nationals are in this instance uninjured (as a result of payment). Resp. Brief p. 9. They do not speak of Norway. Do Italy and Egypt really have no interest in the extent to which lien rights are acquired by foreign nationals acting through local companies, particularly where, as here, such rights are asserted to be greater than those available to Italian and Egyptian nationals? And does Norway have no interest in the manner in which other countries permit the assertion of lien claims against a Norwegian flag vessel owned by a Norwegian national? And does the predominant interest in such a question shift to any other country a national of which acquires a claim against the vessel through a fortuitous chain of communication and contracting unknown to the vessel owner?

Although Respondents now seek to minimize its impact (Resp. Brief, pp. 9, 10), their argument for a "base of operations" in New York was accepted below and what influence it had can not now be weighed here. Nor can the erroneous view of New York as "base of operations"

be justified by shifting attention from the shipowner to the "business venture". The base of operations criterion has not been applied by this Court (or the lower courts in other cases) to fix liability on a party not operating at that "base of operations", and there is no dispute here that Petitioner Norexim operated its vessel from Norway, not New York.

In sum, Respondents ask this Court to let stand a nationalistic choice of law analysis which unjustly facilitates the application of American law to lien claims of American companies against foreign flag vessels for supplies and services rendered in foreign ports, even though such vessels are neither beneficially owned by American nationals nor operated from the United States. Such a result should not be sanctioned by this Court, and the Petition for Certiorari should be granted.

Respectfully submitted,

R. Frederic Fisher
Attorney for Petitioners

D. Thomas McCune
Of Counsel